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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,601	08/01/2006	Peter Alexander Duine	NL 040112	3676

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EXAMINER

KUMAR, SRILAKSHMI K

ART UNIT	PAPER NUMBER
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2629

MAIL DATE	DELIVERY MODE
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04/28/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,601	Applicant(s) DUINE ET AL.	
	Examiner SRILAKSHMI K. KUMAR	Art Unit 2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The following office action is in response to the amendment on January 18, 2010. Claims 1-19 are pending. Claims 1-6, 9, 10, 12, 14-17, 19 have been amended. Claim 20 has been cancelled.

Information Disclosure Statement

The listing of references in the Search Report is not considered to be an information disclosure statement (IDS) complying with 37 CFR 1.98. 37 CFR 1.98(a)(2) requires a legible copy of: (1) each foreign patent; (2) each publication or that portion which caused it to be listed; (3) for each cited pending U.S. application, the application specification including claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion, unless the cited pending U.S. application is stored in the Image File Wrapper (IFW) system; and (4) all other information, or that portion which caused it to be listed. In addition, each IDS must include a list of all patents, publications, applications, or other information submitted for consideration by the Office (see 37 CFR 1.98(a)(1) and (b)), and MPEP § 609.04(a), subsection I. states, "the list ... must be submitted on a separate paper." Therefore, the references cited in the Search Report have not been considered. Applicant is advised that the date of submission of any item of information or any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the IDS, including all "statement" requirements of 37 CFR 1.97(e). See MPEP § 609.05(a).

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be

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incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 2-10, 14, 15 teach the limitation of "substantially". The term "substantially" renders the claims indefinite as it is unclear whether the limitation is accomplished or not. Appropriate correction is required.

With respect to claims 11-13, 16-18 are also rendered indefinite as they depend upon claims which are indefinite.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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5. Claims 1 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Machida et al (US PG Pub 2004/0252361).

As to independent claim 1, Machida et al teach an electrophoretic display panel (Fig. 1) for displaying a picture and subsequently displaying a subsequent picture comprising a pixel (paragraph 0013) having an electrophoretic medium (L, fluid medium) comprising first and second charged particles (4 & 5), the first charged particles having a first optical property (4, of a certain color), the second charged particles having a second optical property (5, of a different color that 4) different from the first optical property, the first and the second charged particles being able to occupy positions in a common region of the pixel (the area between 1 and 6 is the common region), the common region comprising at least a first sub region and a second sub region (Figs. 2-6, showing different sub regions with different particles and paragraphs 0079-0087), an optical state depending on the positions of the particles in the common region (paragraphs 0079-0081), and transition control means being able to control a transition of at least a first number of the first particles and at least a second number of the second particles being in separate regions in the common region for displaying the picture to separate regions in the common region for displaying the subsequent picture (paragraphs 0079-0087), characterized in that, the transition control means are further able to control the first number of the first particles and the second number of the second particles to be in separate regions in the common region during the transition (Figs. 2-6, paragraphs 0079-0087).

As to independent claim 19, this claim differ from claims 1, above only in that claim 19 is a method, whereas claim 1 is directed to an apparatus or device. Thus method claim 19 is analyzed as previously discussed with respect to apparatus/device claims 1, above.

Response to Arguments

6. Applicant's arguments filed 1/18/2010 have been fully considered but they are not persuasive.

With respect to the 35 USC 112, Applicant argues “an inventor’s claim terms take on their ordinary meaning” and where the ordinary dictionary meaning of “considerable in...extent” or “largely but not wholly that which is specified”, thus not indefinite. Examiner, respectfully disagrees. The term substantially renders the claim indefinite since the definition of the term teaches that which is not certain. For example, in claim 3 applicant claims "substantially empty" this is indefinite as one is unclear as to the amount of particles still present. If 1000 particles can be held, substantially empty could potentially mean that a broad range of particles are being held, e.g. 1 to 999. Therefore, the 35 USC 112 rejection is maintained.

Applicant argues where Machida fails to teach or suggest the claimed invention in that Machida does not concern itself with the functionality and subsequently does not address the feature of "the transition control means are further arranged to control the first number of the first particles and the second number of the second particles to the in separate sub regions of the common region during the transition." Examiner respectfully disagrees with this assertion. The prior art of Machida discloses the feature of “the transition control means are further arranged to control the first number of first particles and the second number of the second particles to the in separate sub regions of the common region during the transition is taught by paragraphs 0079-0087. These teach different transitions of the display in order for the displaying of images. Therefore, the prior art of Machida teaches the claimed invention. Thus, the rejections are maintained and made FINAL.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SRILAKSHMI K. KUMAR whose telephone number is (571)272-7769. The examiner can normally be reached on 7:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sue Lefkowitz can be reached on 571 272 3638. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Srilakshmi K Kumar/
Primary Examiner
Art Unit 2629

April 22, 2010
SKK